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In the
Supreme Court of the United States

OCTOBER TERM, 1964.

GERALD M. LUKASIK,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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The Scheffer Press, Inc.—ANdover 3-6850

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To The Honorable, The Chief Justice and Associate Justices of The Supreme Court of The United States:

The petitioner, Gerald M. Lukasik, prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

JUDGMENT AND OPINION OF THE COURT BELOW.

The judgment of the United States District Court for the Northern District of Illinois, Eastern Division, was entered on January 29, 1965, and is not yet reported; it appears in the printed Appendix filed with, and certified by, the Clerk of the United States Court of Appeals as a part of this record, and transmitted herewith.

The opinion of the United States Court of Appeals for the Seventh Circuit, affirming said judgment, was filed on the 29th day of January, 1965. It is reported at 341 F.2d 525. The petition for rehearing was denied on March 15, 1965, and the order denying said petition is set forth in the petitioner's Appendix hereto, and in the certified copy of the record.

STATEMENT OF JURISDICTION.

The order of the United States Court of Appeals for the Seventh Circuit, affirming the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, was filed on the 29th day of January, 1965. On March 15, 1965, it was ordered that the petition for rehearing be denied. This petition is filed within the time allowed by the Circuit Justice pursuant to application timely made under the provisions of Rules 34, 35 and 50 of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

1. Did the refusal by the trial court to limit cross-examination by the government so as to exclude an offense which allegedly was committed by the defendant but for which offense he was neither charged nor on trial, embarrass or confound the defendant in his defense of the crime for which he was on trial.

2. Where the government over the objection of the defendant presented evidence of another offense which had not been made the subject of an indictment, and the defendant wished to take the witness stand to defend himself against the charge for which he was on trial, but the Court refused to restrict the government, upon defendant's request, to cross-examination on the case

before the jury, and stated that he would permit the government to cross-examine on the other offense (even though the defense stated it would not be in the direct examination) and thus subject the defendant to answers which could result in the return of another indictment against him, did not the Court deprive the defendant from making a defense to the charge for which he was on trial?

3. In a criminal case should not cross-examination be confined to the issues in the case on trial?

4. If the offense which was not charged against the defendant had been made the subject of a separate count in the indictment on which the defendant was being tried, would not the inclusion of such separate offense been a prejudicial joinder and subject to separate trial under Rule 14 of the Federal Rules of Criminal Procedure?

STATEMENT OF THE CASE.

This action was commenced by the return of an indictment charging the petitioner, Gerald M. Lukasik, together with David J. Tinucci, and one Robert J. Baran and divers other persons whose names were to the grand jury unknown, with a conspiracy to falsely make, forge and counterfeit five-doller silver certificates with intent to defraud contrary to the provisions of Title 18, U.S.C., Section 371.

Robert J. Baran was dismissed as a defendant prior to trial, and the trial proceeded against the petitioner and David J. Tinucci. The jury returned a verdict of guilty as charged on June 28, 1963. On judgment rendered on the verdict, the petitioner, Lukasik, was sentenced on the same day to a term of five years in the custody of the Attorney General under the provisions of Title 18, Section 4208(a)(2).

The errors relied on below were insufficiency of the evidence; conviction on inadmissible hearsay evidence; improper remarks of the Court regarding the availability of an appeal; and the deprivation of a fair trial by the wrongful preclusion of evidence on the petitioner's behalf and by the wrongful frustration of his theory of defense. The United States Court of Appeals for the Seventh Circuit affirmed the judgment of the United States District Court for the Northern District of Illinois, as stated hereinabove.

STATEMENT OF FACTS.

The evidence adduced at the trial indicates the following. Petitioner Lukasik, who was a printer by trade, met his co-defendant Tinucci, who was not a printer and not familiar with the printing business, during the summer of 1960, when Tinucci visited one Joe Luchetti doing business as Freke Printing Company, in Cicero, Illinois, where Petitioner Lukasik was employed as operator of a 1250 multilith press. Tinucci sought Lukasik's help in equiping a printing shop in return for which Lukasik was to have the use of the shop evenings.

Late in November, 1960, Lukasik told the dismissed defendant Baran of a man who needed a driver, that Lukasik was going to do printing for that man, that he would get some jobs on the side as well and would teach Baran the business. Lukasik introduced Tinucci to Baran in a Cicero tavern as Anthony Rocco. Tinucci told Baran he needed a driver and helper in opening up a print shop.

Therein followed a series of transactions involving Baran and Tinucci whereby premises, equipment and supplies were acquired under a variety of assumed names and addresses.

Baran assisted Lukasik in setting up shop in Room 205, at 711 South Dearborn Street, Chicago, Illinois, usually in the evening. Outside of the brief appearance of some delivery men, he saw nobody else there. All three, Baran, Lukasik and Tinucci had keys to Room 205.

Baran saw Lukasik operate the camera and press when Lukasik printed a rug cleaning advertisement and a policemen's examination. Baran never did learn how to run the press, and Lukasik told the agents that he had never taught Tinucci its operation.

Early in February, 1961, Lukasik brought a box of white cards to Baran's home. The next day when Baran told Lukasik that the cards were reproductions of blank Selective Service and Illinois Voter Registration cards, Lukasik said that he had printed them for Rocco who was supposed to sell them or otherwise get rid of them, and that Lukasik did not want to keep them.

On February 2, 1961, having been advised by the building management that the rent for Room 205 was due and that the room would be repossessed, U.S. Secret Service Agents conducted a search. They found the 1250 multilith press, the ATF Mastercraft camera, a paper cutter, a vacuum frame, inks, paper and a pile of trash.

Inside the base of the press below the printing cylinder were two small scraps of a counterfeit $5 bill. In the trash pile was a piece of a negative of a genuine $5 bill, two border portions of a counterfeit $5 bill, and a piece of Weston's Defiance bond 100% cotton fiber paper. They also found a package of offset paper and five empty ream packages of Cortland bond paper. Inside the camera were two negatives of Selective Service cards bearing the names Lukasik and Baran.

Six counterfeit $5 bills which had come into the possession of the Chicago office of the Secret Service between December, 1960, and February, 1961, the scraps found in the press, and samples of the bond paper bought by Tinucci from Warner and Dwight were sent to the Bureau of Engraving in Washington, D.C. These bills were found to be qualitatively identical and quantitatively similar to the scraps.

Lukasik told Secret Service Agents he merely helped Tinucci to buy a press at Tompkins and that for this small service he was to be allowed to use the equipment; that he ran off a few small jobs on the equipment in the evening on his own. Upon his arrest he first denied then immediately admitted printing the identification cards but claimed that Tinucci knew nothing about them.

During the trial the evidence regarding the printing of the Selective Service Cards and the Illinois Voters Registration cards was objected to by Petitioner's counsel and the following colloquy occurred. (A. 95-100).

> "Miss Lavin: During Mr. Zvetina's opening statement, he referred to certain selective service cards. He said it was proper to his proof because of identity.
>
> At that time, Mr. Zvetina had showed me two selective service cards, one of which bore the name of the defendant Lukasik. So, perhaps, there might have been some basis for the statement of his identity.
>
> Since this trial has started Mr. Zvetina has directed my attention—all of our attentions as a matter of fact—to a stack of blank selective service cards.
>
> As I understand it, these were found in the residence of the man Baran. I must assume, since he brought them to our attention, that is his intention to introduce them into evidence. Certainly, on blank

selective service cards the basis for introducing them —as has been given us, this matter of identity—will have no substance. Actually, I bring this to your Honor's attention in an effort, if possible, to keep us from going into this matter which I consider highly prejudicial. I can see no basis for the introduction, except to show that, "Well, here are blank selective service cards. So the inference is that money could be produced."

I just want to bring it to your Honor's attention.

Mr. Zvetina: May I make this statement, your Honor?

Essentially, what Miss Lavin says is correct. I intend to introduce these. However, there will be additional evidence which will establish that the defendant Lukasik printed these blank selective service cards and other cards contained thereon, at the B & J Printing Company.

The Court: I take it you will offer that evidence, first, the evidence of having printed them?

Mr. Zvetina: Well, your Honor, it actually needs two witnesses to do it.

I represent to the court that Baran will testify that the defendant Lukasik presented these cards to him in early February, 1961, and asked him to hold them and stated to him that he had printed these cards for the defendant Rocco—that is, for the defendant Tunicci.

The Court: Well, that is what I am talking about.

Mr. Zvetina: That type of evidence would have to precede it. Otherwise, it would certainly be most prejudicial to get it into the record without some evidence connecting it up.

Mr. Zvetina: Before I offer them in evidence, that will be established; That the defendant stated that he had printed these for Rocco.

The Government's theory, again, is that this is highly significant to prove the identity of the individual doing the counterfeiting here—the fact that a very similar type of transaction, a counterfeiting of

selective service cards and Illinois voter's registration cards, was admittedly done by the defendant Lukasik at the behest of the defendant Tinucci. So it tends to show a number of things; That he was doing printing at the behest of Tinucci, that it was of a similar nature, that the same equipment was used—

The Court: Do you have cases to support that?

Mr. Zvetina: Not specifically, your Honor. I have cases which set forth the principle of using proof of other matters, which incidentally involve misconduct or crime, to show—

The Court: Well, you are running quite a risk on pioneering.

Mr. Zvetina: I realize that, your Honor, I think this is a risk that I have to run in this instance.

The Court: You fully realize it.

I am not so certain about it myself, because of the fact that this evidence is violation of state—part of it state, one of them, the Illinois voter's registration, would be a violation of a state law.

Mr. Zvetina: Yes your Honor, I realize that.

The Court: The other would be the violation of a federal law. You are presenting another crime.

Now, of course, if it does come in incidentally, that is true. Is this really being offered because it is incidental or is this being offered as part or as supporting proof that a man who has done that would be likely to do something else? Isn't that what you are really, at heart, offering that for?

Mr. Zvetina: No, your Honor, that is a possible inference, but my understanding of the law is that where it is not introduced solely to show predisposition to commit crime, in general, where it can be related—where it is a similar type crime which can be related to the specific crime you are dealing with, it tends to show a number of things—part of a general scheme or plan—

The Court: If you have got a good case, why do you want to endanger it by bringing that in?

Mr. Zvetina: Well, your Honor, I think thus far, as your Honor has heard the evidence, there has been some testimony as to the defendant Lukasik. I felt it should be brought in to show the identity of the partner.

The Court: Is that the only printing identification you are going to have of the defendant Lukasik?

Mr. Zvetina: No, there will be testimony as to his use of the press, but not any particular job done at the behest of the defendant Tinucci.

This will be the sole evidence that he performed a printing operation in cooperation with or at the behest of the defendant Tinucci."

That was allowed over defense objection.

Shortly before the Government rested, petitioner's attorney tried to secure an advance ruling by the Court on whether, if the defendant took the stand to defend the charge in the indictment, the Court would permit the Government to go beyond the direct examination *which would be confined to defending the charge for which petitioner* was on trial, and permit cross-examination on the offenses raised by the evidence of the cards.

The following colloquy appears (A. 218-9).

"Miss Lavin: What I am asking for is if that is not touched on in the examination of the defendant, will it be excluded on the cross examination of the defendant?

The Court: If you do not go into the question, if you do not examine him on the question of the cards? Once a witness takes the witness stand, how can I restrict examination, or how can I say to the jury he is only testifying as to what he has been examined on a direct examination. Once a witness takes the witness stand, who is a defendant himself, how can I say to the jury, Well, he can only be questioned on what he was asked direct questions about.

Miss Lavin: Your Honor, this is, of course, I suppose the vice of these extraneous matters. He is here on a counterfeiting charge. He did not come in here to defend against this charge. Well, that is the basis of my request.

The Court: Well, if he takes the witness stand, I will be compelled to let him be examined about all of the facts that are in the records.

Miss Lavin: Then, he will not take the stand."

Whereupon after the government rested, the petitioner put forth evidence in defense of the charge in the indictment but because of the trial Courts ruling did not take the stand in his own behalf. The jury found him guilty as charged.

REASONS FOR GRANTING THE WRIT.

I. There is involved in this case, an important issue involving a serious legal question which has not yet been decided by this Court but which occurs frequently in criminal cases brought in the United States District Courts; to wit: when a defendant wishes to defend himself against a crime charged is he open to questioning on examination by the government on all depredations of his life?

II. The decision of the Court of Appeals for the Seventh Circuit in this case is in direct conflict with the rationale and the spirit of decisions of Courts of Appeals for other Circuits, and contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

I

It frequently occurs in the course of criminal cases that prosecutors will interject into the criminal charge to which the defendant is held to answer, evidence of another offense with which the defendant is not charged. It is

one thing to offer evidence of a similar prior offense for which the defendant stands convicted in order to impeach his credibility. It is another thing to present evidence of another offense for which the defendant stands convicted in order to show intent. This usage has fallen into much abuse. However, the case at bar presents the unusual situation where a defendant who is on trial for a charged offense is confronted with evidence of another crime for which he has not *as yet* been indicted. The prospect of defending himself on the charge for which he is standing trial is one hurdle, but to be forced to face the additional prospect of answering to an offense for which he has not been charged is not only an insurmountable challenge but interferes with his defense against the charge for which he is on trial. In recent times, prosecutors have glibly used evidence of other offenses by stating that this is offered to show intent. This is not as simple as it is stating it to be so. As in the case at bar, most times the jury is presented with evidence of another offense in order to leave with them the impression that if the defendant committed another offense, he is apt or likely to have committed the offense for which he is on trial.

Generally speaking, where a party becomes a witness in his own behalf in a criminal case, the rules which govern his cross examination are those which obtain in civil cases. According to the weight of authority, cross examination should extend only to such matters which have been referred to in the direct examination. There is reason for confining the cross examination of a defendant to the matters which have been gone into in the direct examination because, to compel answers to other questions, particularly to questions relating to offenses with which defendant has not *as yet* been charged, may be

deemed a violation of the constitutional provision which exempts him from testifying against himself. It is true that if a defendant has been convicted of former crimes it may be offered to affect credibility. In the case at bar, however, if confessions of other crimes are sought to be extracted by cross examination which on another trial will constitute complete proof, petitioner contends he has been held to answer for a crime not charged contrary to the first clause of the fifth amendment, and deprived of presentation of a defense on his behalf as to crimes charged contrary to the Sixth.

The accused, testifying as a witness, must answer on cross examination as to all matters which are relevant to his examination in chief. With this provision, the petitioner does not quarrel. In most of the cases, including the case at bar, the defendant was willing to be examined fully and thoroughly as to *the offense for which he stands trial.* Because of his peril in the pendency of other charges which have not yet been presented, he is precluded from taking the stand if he may be inquired of as to such charges. By taking the stand as a witness, the trial court ruled he was deemed to have consented and offered to submit to inquiry; and he must testify to whatever has bearing on the evidence presented in the cause for which he is standing trial. The Fifth Amendment to the Constitution holds that "No person shall be held to answer for a capital or otherwise infamous crime, unless upon a presentment or indictment of a grand jury, • • •"

In the case at bar, the defendant was willing to defend himself upon the charge made by the indictment of a grand jury. In view of the trial court's ruling that it would not restrict the Government from cross examination which could only be aimed at requiring him to answer to charges

of a felony not made by the grand jury, he was thereby placed in a position where he was unable to defend himself against the charges for which he was on trial, without exposing himself to an enforced confession to another crime not charged.

The petitioner respectfully submits that this dilemma which he faced is common to a great number of cases throughout the District Courts of the United States and poses a serious question which more and more frequently confronts defendants in criminal cases. In this case, the trial judge had serious qualms (See pp. 6-8 this brief). The prosecutor acknowledged that the purpose of introducing the other offense was for "identity." (See p. 7 this brief) This can only mean that if the petitioner printed the Selective Service and Illinois Voters Registration Cards, it is likely that he printed the counterfeit notes. The basis upon which this evidence was admitted was erroneous in law and its threatened usage constituted the deprivation of the defendant's right to make his defense to the charge for which he was held to answer by the indictment of the grand jury.

> "In this case, the necessity for the petitioner's testifying was even greater than usual. All morning and afternoon of the day of the trial the Government called witnesses and presented evidence. When the petitioner's turn came, no defense was offered; not even the petitioner took the stand to deny his guilt. In view of this situation, with all the evidence on one side and none on the other, it was not surprising that the jury concluded the petitioner was guilty.
>
> "Counsel for petitioner understandably was unprepared for the situation that developed suddenly at the end of the Government's case. He had planned from the beginning to call petitioner as the sole defense witness, but he had not anticipated the problem created by the inadmissible statements. Trial counsel

did not know and thus could not inform petitioner of the applicable law. Counsel sought a ruling from the court but the request was denied. *Poe* v. *United States*, D.C. D.C. 233 F. Supp. 173, 177.

II.

The petitioner was charged, with his co-defendant, with conspiring to counterfeit Five Dollar Bills. Under a pretext of establishing "identity" (A. 97 and pp. 6-8, *supra*) the government adduced testimony of petitioner's admission that he printed Selective Service and Voters' Registration Cards.

It is our submission that such evidence that clearly was intended to and did influence the jury to convict him for a reason other than the specific offense for which he was charged. The government purposely confused the admission with the charge made.

A Secret Service agent testified about an interview with petitioner where Secret Service agent Jordan questioned him:

> "Jordan asked him, did you while you were working there make anything that was counterfeit . . . Jordan said, 'Didn't you make up any counterfeit Selective Service or Draft Cards as they are commonly known, or Illinois Voters Registration Cards?'" (A. 204)

Had the conspiracy charge and the manufacture of the cards been charged in one indictment, we contend there would have to be a severance for improper joinder, and the patent confusion of the charges through the testimony. The government's "identity" contention will not prevail in the face of this prejudice.

> "The Government strenuously argues that the two crimes were sufficiently similar to come within the 'identity' exception to the 'other crimes' rule. How-

ever, once that argument has been rejected, the 'similarity' point cuts the other way. Every suggestion at the trial that the two crimes were closely parallel increases the likelihood that the jury may become confused or misuse the evidence. The more similar the crime, the more careful the trial court and Government counsel must be to keep the evidence separated." *Drew* v. *United States*, C.A.D.C. 331 F. 2d 85, 94, fn. 21.

The same Court of Appeals has clearly expressed the frustration inherent in like situations.

"Prejudice may develop when an accused wishes to testify on one but not the other of two joined offenses which are clearly distinct in time, place and evidence. His decision whether to testify will reflect a balancing of several factors with respect to each count: the evidence against him, the availability of defense evidence other than his testimony, the plausibility and substantiality of his testimony, the possible effects of demeanor, impeachment, and cross-examination. But if the two charges are joined for trial, it is not possible for him to weigh these factors separately as to each count. If he testifies on one count, he runs the risk that any adverse effects will influence the jury's consideration of the other count. Thus he bears the risk on both counts, although he may benefit on only one. Moreover, a defendant's silence on one count would be damaging in the face of his express denial of the other. Thus he may be coerced into testifying on the count upon which he wished to remain silent. It is not necessary to decide whether this invades his constitutional right to remain silent, since we think it constitutes prejudice within the meaning of Rule 14.

"In the present case the appellants did not specify at trial the counts upon which they wished to remain silent and why. It does appear that, when the trial court asked Cross whether he wished to testify in his own behalf Cross answered: 'Which case, Your Hon-

or?' During the extended colloquy which followed, Cross repeatedly tried, without his counsel's assistance, to elaborate upon his objections to the joinder. But the court seems to have precluded this by insisting that the issue of joinder had been determined in the pretrial denial of severance and by demanding a categorical answer to its original query. Thereafter the court applied the same ruling to Jackson.

"An examination of Cross' testimony on both counts supports his claim in this court that he wished to testify on Count II and remain silent on Count I. His testimony on Count II was that he was a victim and not a cohort of the armed robbers who entered the tourist home behind him. This testimony, which met the Government's case directly, was so convincing that the jury believed it despite the presecutor's efforts at cross-examination and impeachment. On Count I, however, his denial was plainly evasive and unconvincing. He testified that he had been drinking heavily and did not know his whereabouts at the time of the church robbery. On cross-examination he was open to questioning concerning his generally tawdry way of life and his prior convictions.

"Thus it would appear that Cross had ample reason not to testify on Count I and would not have done so if that count had been tried separately. In a separate trial of that count the jury would not have heard his admissions of prior convictions and unsavory activities; nor would he have been under duress to offer dubious testimony on that count in order to avoid the damaging implication of testifying on only one of the two joined counts. Since the joinder embarrassed and confounded Cross in making his defense, the joinder was prejudicial within the meaning of Rule 14." *Cross* v. *United States*, 335 F. 2d 987, 989, 990, 991.

To the same effect, see the long line of cases in the Eighth Circuit.

Eckhert v. *United States,* 188 F. 2d 336
Glover v. *United States,* 147 F. 2d 426
Little v. *United States,* 93 F. 2d 401
Gideon v. *United States,* 52 F. 2d 427
Edwards v. *United States,* 18 F. 2d 402

This case is even more aggravated. Here Petitioner was not even charged with the crime upon which his conviction rests.

CONCLUSION.

Wherefore, this Petitioner prays this Court issue its Writ of Certiorari to review the decision of the Court of Appeals for the Seventh Circuit entered herein.

Respectfully submitted,

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APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

September Term, 1964 — January Session, 1965

No. 14367
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
GERALD M. LUKASIK,
Defendant-Appellant.
No. 14368
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
DAVID J. TINUCCI,
Defendant-Appellant.

Appeals from the United States District Court for the Northern District of Illinois Eastern Division.

JANUARY 29, 1965

Before DUFFY, KNOCH and CASTLE, *Circuit Judges.*

KNOCH, *Circuit Judge.* David J. Tinucci, Gerald M. Lukasik and Robert J. Baran were charged in a one-count indictment with unlawfully, wilfully, and knowingly conspiring to counterfeit $5 silver certificates of the United States in violation of Title 18 U.S.C. §371, conspiracy to commit an offense against the United States or to defraud the United States. Robert Baran was dismissed as a defendant. Trial of the other two defendants resulted in a verdict of guilty and sentences of five years each. This appeal followed.

The appellants cite as error: (1) insufficient legal evidence to support conviction; (2) improper admission of hearsay evidence; (3) improper admission of evidence of offenses not charged; (4) improper remarks of the Court respecting appeal and conspiracy; (5) wrongful preclusion of evidence on behalf of defendant Gerald Lukasik and frustration of his theory of defense; and (6) failure to establish venue.

The evidence adduced at the trial indicates the following. When he was arrested on February 24, 1961, defendant Lukasik, who was a printer by trade, told Secret Service Agents that he had met defendant Tinucci, who was not a printer and not familiar with the printing business, during the summer of 1960 when Tinucci visited Joe Luchetti doing business as Freke Printing Company, in Cicero, Illinois, where defendant Lukasik was employed as operator of a 1250 multilith press.

Lukasik told the agents that Tinucci sought his help in equipping a printing shop in return for which Lukasik was to have the use of the shop evenings.

There followed a number of transactions whereby premises, equipment and supplies were obtained under a variety of false and assumed names and addresses. We note a few examples which are typical of the incidents disclosed in the evidence.

On November 8, 1960, Tinucci representing himself to be Mario Muccianti, signed a credit application at the Ability Service Company, 700 S. Dearborn Street, in connection with inquiry about purchase of a multilith press, giving the address in Cicero, Illinois, of the real Mario Muccianti who had not authorized such use of his name.

On November 14, 1960, both defendants visited Tompkins Printing Equipment Company, 712 S. Dearborn Street, Chicago, where Tinucci had previously inquired about a press and where he was known as Anthony Rocco.

Tinucci introduced defendant Lukasik as Jerry Jursak, said he was opening a printing business at 711 S. Dearborn Street with Lukasik operating the equipment.

Lukasik approved a 1250 addressograph multilith offset duplicating machine. They also selected an ATF Mastercraft camera. Tinucci signed an order blank in the name of Anthony J. Rocco with an address in Cicero, Illinois, with a notation that he was not to be "contacted at home," so that his wife would not learn he was going into the printing business. The address given was that of an old acquaintance, Leo Mazzolini sometimes spelled "Muzzolini." Mario Muccianti who had seen Tinucci almost daily for ten years never knew him to be married.

November 17, 1960, Tinucci rented Room 205 at 711 S. Dearborn Street, under the name Leo Muzzolini, stating that he and his partner Mr. Rocco were starting in the printing business. He also signed a lease with Tompkins Company for the 1250 multilith press, the camera and other equipment under the name Anthony J. Rocco. When Tinucci returned the lease for Room 205 to the rental agent, it bore the signatures of Leo Muzzolini and Anthony Rocco. The actual Leo Muzzolini did not sign the lease or authorize the use of his name.

Late in November, 1960, Lukasik told his friend Baran of a man who needed a driver, that Lukasik was going to do printing for that man, that he would get some jobs on the side as well and would teach Baran the business. Lukasik introduced Tinucci to Baran in a Cicero tavern as Anthony Rocco. Tinucci told Baran he needed a driver and helper in opening up a print shop.

Also in November, 1960, Tinucci and Baran visited Warner Paper Company on South Wells Street, Chicago (where on a prior visit Tinucci, introducing himself as Jack Monticello of B & J Printing, had secured a sample of the "oldest" rag bond paper for a "particular customer") and bought four reams of Weston's Defiance Bond 100% rag paper, Tinucci giving his firm name as B & J Printing Company of 3501 West North Avenue, which in fact was the address of Leader Cleaners.

November 28, 1960, Baran drove Tinucci from Cicero to the Tompkins Company on Dearborn Street, where Tinuc-

ci (signing the name Anthony Rocco) rented equipment to make offset plates, which equipment was then brought to Room 205 where Baran saw a 1250 multilith press and camera. The same day they also visited Dwight Brothers Paper Company on Clark Street in Chicago and ordered a ream of Defiance Bond. Baran signed the order "R. J. Keren" at Tinucci's request because, he stated, Tinucci did not want it known he was in the printing business. A false firm name and address were also given. Baran later sought to exchange the paper for an older less bright shade.

Tinucci would telephone Baran when to pick him up and would advise him what to say when they went to obtain equipment and materials.

December 2, 1960, Tinucci ordered all the Defiance Bond in stock at Warner Paper Company, explaining in response to inquiry that he had not set up shop at the address originally given but at another address in Cicero, Illinois. At the time, the shop in Room 205 was not yet in actual operation.

There was testimony that in the Chicago area only these two firms, Warner and Dwight sold this paper.

Baran assisted Lukasik in setting up shop in Room 205, usually in the evening, and sometimes was there with Tinucci. Outside of the brief appearance of some delivery men, he saw nobody else there. All three, Baran, Lukasik and Tinucci had keys to Room 205.

Baran saw Lukasik operate the camera and press when Lukasik printed a rug cleaning advertisement and a policemen's examination. Baran never did learn how to run the press. Lukasik told the agents that he had never taught Tinucci either.

Early in February, 1961, Lukasik brought a box of white cards to Baran's home. The next day when Baran told Lukasik that the cards were reproductions of blank Selective Service and Illinois Voter Registration cards, Lukasik said that he had printed them for Rocco who was supposed to sell them or otherwise get rid of them, and that Lukasik did not want to keep them.

On February 2, 1961, having been advised by the building management that the rent for Room 205 was due and that the room would be repossessed, U.S. Secret Service Agents conducted a search. They found the 1250 multilith press, the ATF Mastercraft camera, a paper cutter, a vacuum frame, inks, paper and a pile of trash.

Inside the base of the press below the printing cylinder were two small scraps of a counterfeit $5 bill. In the trash pile was a piece of a negative of a genuine $5 bill, two border portions of a counterfeit $5 bill, and a piece of Weston's Defiance bond 100% cotton fibre paper. They also found a package of offset paper and five empty ream packages of Cortland bond paper. Inside the camera were two negatives of Selective Service cards bearing the names Lukasik and Baran.

Six counterfeit $5 bills which had come into the possession of the Chicago office of the Secret Service between December, 1960, and February, 1961, the scraps found in the press, and samples of the bond paper bought by Tinucci from Warner and Dwight were sent to the Bureau of Engraving in Washington, D.C.

Edward Burnell, the Bureau's counterfeit analyst, subjected these items to scientific tests and found that the scraps, the paper samples and two counterfeit bills had identical fibre and were qualitatively identical by spectrographic analysis; one counterfeit bill per spectrophotometer test had the identical green shade as the scraps; microscopic examination of the six counterfeit bills and the scraps showed so many common defects that, in his expert opinion, the face of the scraps and the bills were printed from the same plate or negative.

When questioned by Secret Service Agents after arrest, Tinucci denied knowing Lukasik, Baran, Leo Mazzolini, Mario Muccianti, or the printing company in Room 205 at 711 South Dearborn Street; denied using the name Anthony Rocco; denied buying printing equipment or materials.

Lukasik said that he merely helped Tinucci to buy a press at Tompkins and that for this small service he was to be allowed to use the equipment; that he ran off a few small jobs on the equipment in the evening on his own. He denied printing the cards until confronted with them, but claimed that Tinucci knew nothing about them.

Viewing the evidence in the light most favorable to the government, *U.S.* v. *Winston*, 7 Cir., 1955, 222 F.2d 323, 325, we must conclude that the jury could reasonably infer that both defendants conspired to counterfeit United States bills with intent to defraud, from such evidence as the items found in the shop in Room 205, which was established by Tinucci who was not himself a printer, the use of so many false names and addresses in acquiring the equipment and materials, the cooperation of Lukasik, who alone of the three original defendants was a printer, his knowledge of the falsity of the names used, his own use of the press, and the false exculpatory statements of both Lukasik and Tinucci.

It is contended that admission into evidence of the six counterfeit bills was error, especially in view of receipts and markings attached to them which defendants contend improperly gave the jury the impression that these had been passed by or through the defendants to innocent victims. The government offered expert testimony to show that these counterfeit bills and the scraps found in Room 205 came from the same plate or negative. The jury was expressly told that Agent Jordan's testimony as to the source of the bills was not offered to associate the defendants with passing them but only as foundation for the expert witness who did offer evidence from which the jury could infer that these bills were made from the equipment in Room 205. The defendants note that a plate or negative is highly portable, but this fact goes to the weight, not the admissibility, of the evidence. Much of the testimony respecting the receipts arose from Agent Jordan's answers to questions concerning procedure in the Chicago office, to which he was assigned and with which he was familiar, so that he could establish these docu-

ments as records made in the regular course of business. *LaPorte* v. *U.S.*, 9 Cir., 1962, 300 F. 2d 878, 880; *U.S.* v. *Olivo*, 3 Cir., 1960, 278 F. 2d 415, 417.

The fact that the bills were counterfeit and were linked to defendants by the expert witness's testimony would provide a basis for inference of an intent to defraud. The jury had been told of the analyses made of these bills at the Bureau of Engraving. Notations such as the names of those who surrendered the bills to the authorities or the fact that these bills were being used in this case could not have been misleading or prejudicial.

Although the admission in evidence of the blank reproductions of the Selective Service and Illinois Voter Registration cards, together with evidence of Lukasik's statement that he had printed them for Tinucci, incidentally proved that defendant Lukasik had committed an independent crime, this evidence, in the circumstances of this case, was not thereby rendered incompetent as defendants contend. The evidence was introduced to show that Lukasik had performed a printing job for and on the direction of Tinucci, after Lukasik had said he was going to operate the press for Tinucci. This controverted Lukasik's later assertions that he had no connection with Tinucci other than helping to select the press. *U.S.* v. *Glory*, 2 Cir., 1947, 158 F. 2d 880, 881; *U.S.* v. *Sebo*, 7 Cir., 1939, 101 F. 2d 889, 891. This evidence tended to show a close relationship between the alleged conspirators. *Kanner* v. *U.S.*, 7 Cir., 1929, 34 F. 2d 863, 866.

We find no prejudicial effect in the admission of photographs of the items found in Room 205 rather than imposition by the Trial Court of a requirement that the equipment and materials themselves be produced in Court. 3 Wigmore, Evidence, 3rd Edition, §796. The government's witness, Agent Jordan, carefully pointed out that the cuttings shown in the two photographs were not found on the premises but were made by Agent Jordan himself to test the blade edge of the cutter.

It further appears to us that the exhibited photographs of the three original defendants were properly introduced

after the question of photographs seen by the witness Robert Tompkins was raised on cross-examination.

We do not agree that the Trial Judge's cautions to the jury from time to time that certain evidence admissible as to one defendant would be inadmissible as to the other defendant until "there is some evidence of conspiracy, something to tie the two together" or "connecting proof", for example, in any way misled the jury as to the degree of proof needed to establish conspiracy. Nor do we think that the jury's final responsibility was diluted by the Trial Court's parenthetical reference early in the trial to a higher court's looking at the record, to explain his persistence in requiring a witness to make it clear to the jury just which of the persons in the courtroom he was identifying. This does not even approach the gravity of the comments criticized by this Court in *U.S.* v. *Fiorito*, 7 Cir., 1962, 300 F. 2d 424, 427.

Defendant Lukasik argues that he was deprived of his chance to testify as to the charge in the indictment because of the introduction of the cards which evidenced another offense and the refusal of an advance assurance that he would not be cross-examined concerning them. Our attention has been invited to *Drew* v. *U.S.*, D.C. Cir., 1964, 331 F. 2d 85; *Cross* v. *U.S.*, D.C. Cir., 1964, 335 F. 2d 987; and *Poe* v. *U.S.*, D., D.C., 1964, 233 F. Supp. 173; which we have studied but find distinguished by their facts.

It is further contended that the government improperly introduced "throwaways" found amid the rubbish on the floor to counteract an assertion that the quality of the counterfeit bills was beneath Lukasik's competence. The evidence does not show that these two exhibits, handbills printed by Lukasik, were found amid rubbish. A former co-employee of Lukasik's testified that only one handbill was a "make ready" copy and that the other was "clean work,"—that he would not say it was a make ready copy. Baran who was present when the handbills were printed, though not himself a printer, testified that the second example represented a fair average quality of the run.

Although the witnesses did not in every instance state both the street and city when testifying to addresses, venue in the Northern District of Illinois was clearly established by many references to the events as occurring in Chicago and Cicero, Illinois. The jury could certainly infer that the offense was committed where the venue was laid. *U.S.* v. *Chiarelli*, 7 Cir., 1951, 192 F. 2d 528, 532, cert. den. 342 U.S. 913.

We have closely scrutinized the record in the light of the points and authorities advanced by counsel for the defendants. It is our considered opinion that the judgments of the District Court must be affirmed.

The Court wishes to express its gratitude to Mr. Robert L. Berner, Jr. of the Illinois bar who accepted the Court's appointment to represent defendant Tinucci in this appeal and to Mr. Raymond J. Smith also of the Illinois bar who served with him. Their skilled efforts are appreciated.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60610

Friday, January 29, 1965

Before
Hon. F. RYAN DUFFY, *Circuit Judge*
Hon. WIN G. KNOCH, *Circuit Judge*
Hon. LATHAM CASTLE, *Circuit Judge*

United States of America,
Plaintiff-Appellee,
vs.
No. 14367
GERALD M. LUKASIK,
No. 14368
DAVID J. TINUCCI,
Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Dibision, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgments of the said District Court in this cause appealed from be, and the same are hereby, AFFIRMED, in accordance with the opinion of this Court filed this day.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60610

Monday, March 15, 1965

Before
Hon. F. RYAN DUFFY, *Circuit Judge*
Hon. WIN G. KNOCH, *Circuit Judge*
Hon. LATHAM CASTLE, *Circuit Judge*

United States of America,
Plaintiff-Appellee,
vs.
No. 14367-68
GERALD M. LUKASIK,
DAVID J. TINUCCI,
Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

It Is Ordered by the Court that the petitions for rehearing filed by the defendants-appellants herein be, and the same are hereby DENIED.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1080

GERALD M. LUKASIK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 341 F.2d 325.

JURISDICTION

The judgment of the court of appeals was entered on January 29, 1965. A petition for rehearing was denied on March 15, 1965. The time to file a petition for a writ of certiorari was extended to April 19,

1965, and the petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, on a trial for conspiracy to counterfeit money, the district court properly admitted evidence that petitioner printed other counterfeit matter on the same press at the direction of one of the co-conspirators.

STATEMENT

Petitioner was convicted in the United States District Court for the Northern District of Illinois of conspiring with others to make counterfeit five dollar bills. He was sentenced to imprisonment for five years, with eligibility for parole at any time. The conviction was affirmed on appeal.

The evidence showed that counterfeit bills which had come into the possession of the government were made from the same negative as scraps of counterfeit $5 bills found in the printing press; the bills corresponded to part of a negative found in the trash at premises which had been leased to petitioner's co-defendant, Tinucci (R. 28-29, 153-155, 181-192). There was evidence that Tinucci, using assumed names, had bought a press, paper and other supplies for those premises (R. 32-33, 47-49, 51-52, 62-65). Tinucci had also leased a multilith off-set machine and camera. Petitioner (using the name Jarzak) was with him during the negotiations for that ma-

chine (R. 69-71, 76, 88). When the premises were searched on February 2, 1961, the camera contained two negatives of Selective Service cards bearing the names of petitioner and Baran (R. 155-156, 246).

Petitioner, a printer, admitted, after his arrest, that he was approached by Tinucci in the summer of 1960 to help Tinucci set up a printing company. According to petitioner, Tinucci said that he did not know very much about printing and that, in return for petitioner's assistance in setting up the shop, petitioner would be allowed to use the equipment at night to make some extra money. Petitioner said that he had helped Tinucci buy a press and had done some small printing jobs at the plant at night. He had seen no evidence of counterfeiting. He also denied that he had printed any counterfeit selective service or voter registration cards (R. 203-204). When shown printing paper with such cards on it, petitioner admitted that he had printed them but said that Tinucci was not with him and had no knowledge thereof (R. 204-205).

Robert J. Baran, a friend of petitioner's, testified that petitioner introduced him to Tinucci (who used the name Rocco) in November 1960. Tinucci said he was going to open a printing business and needed someone to drive for him (R. 106). Baran worked with petitioner in setting up the shop in December, 1960, and saw petitioner do some small printing jobs during the evenings (R. 110). Over objection (see R. 113-131), Baran was allowed to testify that in February, 1961 petitioner brought him a cardboard box (the box which contained the Selective Service

and voter registration cards) and said that he had made them for Tinucci, who was supposed to sell them. Petitioner told Baran he did not wish to keep them in his house (R. 131-132). There was evidence that petitioner was seen at the printing shop in daytime hours, between November, 1960 and January, 1961 (R. 42-43).

ARGUMENT

Petitioner argues that it was prejudicial error to admit any testimony relating to the selective service and voter registration cards. He says that this evidence was not only prejudicial in itself, but that it effectively prevented him from taking the stand in defense of the counterfeiting charge. The evidence however, was directly material to the charge against petitioner and was properly received. It was admitted that petitioner had use of the printing press where the scraps of counterfeit bills were found. The issue was whether he was merely allowed to use the press to make some extra money (as he claimed) or whether he was also used as the printer of the counterfeit money. Evidence that he did more than help Tinucci set up the shop, that he did printing of counterfeit matter and that he admitted doing so at Tinucci's direction went directly to the contested issue in the case. As such it was admissible, whether or not it incidentally disclosed evidence of another crime. *Moore* v. *United States*, 150 U.S. 57; *Williamson* v. *United States*, 207 U.S. 425; *Fernandez* v. *United States*, 329 F.2d 899, 907-908 (C.A. 9),

certiorari denied, 379 U.S. 832; *Grant* v. *United States*, 255 F.2d 341 (C.A. 6), certiorari denied, 358 U.S. 828. And since the evidence as to the cards was relevant, the trial court properly declined to assure petitioner that, if he took the stand, he would not be questioned on that subject.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

FRED M. VINSON,
Acting Assistant Attorney General.

BEATRICE ROSENBERG,
Attorney.

MAY 1965

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